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BEFORE THE ARIZONA CORPORATION CC

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 06 2009

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
WAYWARD WINDS FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
WATER SERVICE IN COCHISE COUNTY,
ARIZONA.

DOCKET NO. W-20553A-08-0467

DECISION NO. 71228OPINION AND ORDER

DATE OF HEARING:

January 23, 2009

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Belinda A. Martin

APPEARANCES:

N.D. Bales, on behalf of Wayward Winds; and

Kevin Torrey, Staff Attorney, Legal Division, on behalf
of the Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On September 8, 2008, Wayward Winds ("Wayward Winds" or "Company") filed
with the Commission an application for a Certificate of Convenience and Necessity ("CCN" or
"Certificate") to provide irrigation water service in Cochise County, Arizona.

2. On September 29, 2008, the Company filed a copy of the public notice of the
application mailed to property owners within the requested area.

3. On October 1, 2008, the Commission's Utilities Division Staff ("Staff") notified the
Company that its application was not sufficient pursuant to the Arizona Administrative Code
("A.A.C").

4. On November 7, 2008, Staff notified the Company that its Application was sufficient

1 pursuant to the A.A.C.

2 5. On November 14, 2008, a Procedural Order was issued setting a hearing in this matter
3 for January 23, 2009, and establishing deadlines.

4 6. On December 8, 2008, pursuant to the Procedural Order, the Company filed
5 correspondence noting that it had published notice of the hearing.

6 7. On December 22, 2008, Staff filed its Staff Report in this matter. Staff recommended
7 approval of the application subject to certain conditions.

8 8. On January 23, 2009, a hearing was held at the Commission's Tucson offices. At the
9 hearing, the Commission learned the Notice of Hearing was not mailed to all of the property owners
10 in the affected area as directed in the November 14, 2008, Procedural Order. Additionally, questions
11 arose regarding the necessity of a franchise agreement.

12 9. On January 27, 2009, a Procedural Order was issued directing the Company to file a
13 late-filed exhibit regarding adequate notice to the property owners and providing a new form of
14 notice to be mailed. Additionally, the Procedural Order directed Staff to file a late-filed exhibit
15 regarding the necessity of a franchise agreement. Finally, the Procedural Order suspended the time
16 clock.

17 10. On February 5, 2009, Staff filed a late-filed exhibit regarding the necessity of a
18 franchise agreement from Cochise County.¹

19 11. On February 11, 2009, Wayward Winds filed a late-filed exhibit reflecting that it
20 mailed notice to the property owners in the form required by the January 27, 2009, Procedural Order,
21 giving the property owners an opportunity to provide comment or to request that the hearing be re-
22 opened.

23 12. The late-filed exhibits raised additional issues and, accordingly, a Procedural Order
24 was issued on March 30, 2009, setting a Procedural Conference for April 9, 2009.

25 13. At the April 9, 2009, Procedural Conference the parties agreed to file additional
26 supporting documents for their respective late-filed exhibits.

27
28 ¹ See Findings of Fact Nos. 26-34 for a discussion of this issue.

1 14. On April 13, 2009, the Company filed information verifying the identity of all the
2 property owners in the proposed CC&N area, and that all property owners have received notice as
3 directed in the January 27, 2009, Procedural Order. No comments, objections, or requests to re-open
4 the hearing were received from property owners.

5 15. On June 17, 2009, Staff filed an additional late-filed exhibit regarding the necessity for
6 a franchise agreement from Cochise County.

7 16. Wayward Winds is an Arizona sole proprietorship owned by N. D. Bales. Mr. Bales is
8 also the owner of Sunizona Water Company operating in Cochise County.²

9 17. Wayward Winds is seeking the Certificate in order to provide water service to
10 approximately 120 acres of land for irrigation purposes. Wayward Winds submitted the Application
11 in response to correspondence from Joshua Moffitt, the owner of the affected property, requesting
12 that the Company provide water service to his land. Although there is a well on Mr. Moffitt's land,
13 he intends to sell all the affected property and has already sold some parcels. Under the terms of a
14 Water System Transfer, Easement and Service Agreement attached to the application, Mr. Bales
15 purchased an easement and the right to withdraw water from the Wayward Winds Well, #55-809065.
16 If the Commission grants the CC&N, Wayward Winds will then become the owner of the well.³

17 18. The legal description of Wayward Wind's proposed service area is set forth in Exhibit
18 'A' attached to this Order.

19 19. According to the Company, Mr. Moffitt first intended to use the property for
20 residential development, but the real estate downturn caused him to reevaluate his plans. Mr. Moffitt
21 subsequently learned that the soil on the property is ideal for growing grapes, and he began selling
22 parcels to individuals interested in pursuing this.⁴

23 20. Mr. Bales has already completed initial construction of the water system, which
24 consists of a completely refurbished well producing approximately 300 gallons per minute, a 5,000
25 gallon storage tank, a booster pump station, and water distribution system. Distribution lines and
26 meters for the individual parcels have not been completed.

27 ² Transcript, at 19-20.

28 ³ Transcript, at 17-18.

⁴ Transcript, at 11-12.

21. Staff concludes that the estimated total cost of \$54,398 for construction of the system is reasonable and appropriate. Staff notes that approval of the CC&N application does not imply any particular future treatment for rate base. No used and useful determination of the proposed plant in service was made and no conclusions should be inferred for future rate making or rate base purposes.

22. For purposes of calculating water demand in the proposed CC&N area, Wayward Winds estimated that approximately 700 grape plants will be planted per acre. Based on information obtained from New Mexico State University, Staff estimated that the system will need to produce 21,000 gallons of water per day, or the equivalent of 14 gallons per minute, to meet demand for water by the fifth year of operation.

23. Staff concludes that the proposed water system will have adequate production and storage capacity to serve the proposed CC&N area within a conventional five year planning period.

24. Wayward Winds' proposed rates and charges, and Staff's recommended rates and charges, are as follows:

	Company Recommended Rates	Staff Recommended Rates
<u>MONTHLY USAGE CHARGE:</u>		
5/8" x 3/4" Meter	\$5.00	N/A
3/4" Meter	5.00	N/A
1" Meter	5.00	N/A
1 1/2" Meter	5.00	N/A
2" Meter	5.00	N/A
3" Meter	5.00	N/A
4" Meter	5.00	N/A
5" Meter	5.00	N/A
6" Meter	5.00	N/A
<u>Monthly Minimum Charge</u>		
1-1/2 inch	N/A	\$95.00
<u>Commodity Charge (Excess of Minimum):</u>		
All Meter Sizes per 25,000 gallons	\$7.00	N/A
Irrigation Water Charges per 1,000 gallons	\$5.00	\$5.00

SERVICE LINE AND METER INSTALLATION CHARGES:

	Company's Proposed Total Charge	Staff Service Line Charge	Staff Recommended Meter Charge	Staff Recommended Total Charge
5/8" x 1/4" Meter	\$ 378	N/A	N/A	N/A
3/4" Meter	409	N/A	N/A	N/A
1" Meter	460	N/A	N/A	N/A
1 1/2" Meter	652	\$582	\$313	\$895
2" Meter	870	N/A	N/A	N/A
3" Meter	1,120	N/A	N/A	N/A
4" Meter	1,920	N/A	N/A	N/A
6" Meter	5,700	N/A	N/A	N/A

SERVICE CHARGE:

Establishment (R14-2-403.D.1)	\$30.00	\$30.00
Establishment (After Hours) (R14-2-403.D.2)	50.00	50.00
Reconnection (Delinquent) (R14-2-403.D.1)	50.00	50.00
NSF Check (R14-2-409.F.1)	50.00	35.00
Meter Reread/If Correct (R14-2-408.C.2)	20.00	20.00
Meter Test/If Correct (R14-2-408.F.1)	20.00	20.00
Deferred Payment (R14-2-409.G.6)	5.00%	5.00%
Deposit Interest (R14-2-403.B.3)	N/A	6 percent annually
Deposit (R14-2-403.B.7)	Per Rule	Per Rule

In addition to collection of regular rates, the utility will collect from its customers a proportionate share of any privileges, sales, use and franchise tax per Commission Rule R14-2-409(D)5.

25. Pursuant to the Commission's rules, Wayward Winds provided five-year projections for plant values, operating revenues and expenses, and number of customers. Such projections are necessary to establish rates for new companies due to the lack of historical data. Staff reviewed Wayward Winds' projections and recommends that the Commission find Wayward Winds' original cost rate base, which is the same as its fair value rate base, to be \$37,333. We adopt Staff's recommendation.

Franchise Agreement

26. At hearing, the issue arose regarding the necessity of a franchise agreement from Cochise County pursuant to A.R.S. § 40-283. The Staff witness testified that Staff did not believe

1 that a franchise agreement was necessary for irrigation purposes.⁵

2 27. Subsequently, Staff filed two late-filed exhibits. In the first, filed on February 5, 2009,
3 Staff stated representatives of both the Cochise County Attorney and the Board of Supervisor's
4 Office stated that franchise agreements are generally required. Attached to Staff's exhibit was a copy
5 of a form of franchise agreement from Cochise County, which stated:

6 **WHEREAS,** _____, has applied and petitioned, pursuant to A.R.S.
7 Section 40-283, to the Board of Supervisors of Cochise County, Arizona, for
8 the right, privilege, license, and franchise to construct, install, operate, and
9 maintain along, over, under and across the streets, alleys, and highways,
10 within the County, facilities for the purpose of maintaining and operating
water lines and all other facilities pertinent to the transmission, delivery and
sale of **water for domestic and commercial consumers**, as may be approved
by the Arizona Corporation Commission; (Emphasis added.)

11 28. At the April 9, 2009, Procedural Conference, Staff stated that, in its opinion, because
12 the form of agreement concerned the sale of water for domestic and commercial consumers, a
13 franchise agreement from the County was not necessary because the Company is seeking authority
14 only for irrigation purposes.

15 29. At the conclusion of the Procedural Conference, Staff was requested to seek additional
16 clarification from Cochise County regarding the need for a franchise agreement from the County.

17 30. On June 17, 2009, Staff filed its second late-filed exhibit. In that exhibit, Staff stated
18 that Staff had spoken with Carl Robie, Director of Natural Resources Policy for Cochise County. In
19 email correspondence, a copy of which is attached to Staff's June 17, 2009, exhibit, Mr. Robie stated
20 that if a water company would be using or impacting a county right-of-way, that company should
21 apply for a franchise from the county; otherwise, there was no need.

22 31. In its late-filed exhibit, Staff stated, "[b]ased upon the information received, Staff
23 believes that Wayward Winds does not need to seek a franchise agreement with Cochise County
24 unless it intends to place its infrastructure either along or across a road that is maintained by Cochise
25 County."

26 32. Staff concluded that, from the information provided by the Company in its application
27

28 ⁵ Transcript, at 60-61, 65-67.

1 and at hearing, Staff does not believe that there are any Cochise County maintained roads within the
2 proposed CC&N area.

3 33. We conclude that, because Wayward Winds proposed CC&N area does not affect any
4 Cochise County roads, the Company is not required, at this time, to obtain a franchise agreement
5 from the County.

6 34. We believe it reasonable, however, that if at any time in the future any Cochise
7 County right-of-way is affected, Wayward Winds shall obtain the necessary franchise agreement and
8 shall file a copy of the franchise agreement with Docket Control within 30 days of Cochise County
9 Board of Supervisors' approval.

10 **Irrigation Purposes Only**

11 35. At hearing, the Company's witness testified that the owner of the property, Joshua
12 Moffitt, originally intended to use the property for residential development.⁶ However, after the
13 downturn in the real estate market, Mr. Moffitt discovered that the soil on his property is particularly
14 suited for growing grapes. According to the Company, Mr. Moffitt has since sold four parcels to
15 others for those purposes.⁷

16 36. Staff's proposed rates and engineering analysis reflect use of the property and
17 equipment for irrigation purposes only. During the hearing, Staff recommended that the Company's
18 CC&N be for irrigation purposes only. Should Wayward Winds decide at any time in the future that
19 it wishes to provide water for any other purposes, it must apply to the Commission for such use.⁸
20 Wayward Winds' witness testified that the Company understands this restriction.⁹

21 37. Staff's recommendation is reasonable and shall be adopted.

22 38. Staff further recommends that the Commission adopt Staff's rates and charges as set
23 forth in Finding of Fact No. 24, above.

24 39. Staff additionally recommends that the Company collect from its customers a
25 proportionate share of any privilege, sales or use tax.

26 _____
27 ⁶ Transcript, at 11-12.

⁷ Company's April 14, 2009, Late-Filed Exhibit.

⁸ Transcript, at 42-44.

⁹ Transcript, at 22-23.

40. Staff also recommends that Wayward Winds be ordered to comply with the following:

- a) The Company shall hire a professional accounting or bookkeeping firm;
- b) The Company shall maintain its books and records in accordance with the National Association of Regulatory Utility Commissioners' Uniform System of Accounts for Water Utilities;
- c) The Company shall use the depreciation rates delineated in Table 3 of the Engineering Report for its water system;
- d) The Company shall notify the Director of the Utilities Division within 15 days of providing service to its first customer; and
- e) The Company shall file a rate application no later than five months following the fifth anniversary of the date the Company begins providing service to its first customer.

41. Staff's recommendations are reasonable and should be adopted.

42. According to Staff, the Arizona Department of Environmental Quality will not regulate this system because the Company will provide only non-potable irrigation water to customers.

43. The proposed CC&N area is not in any Arizona Department of Water Resources ("ADWR") Active Management Area. Staff states it was informed by ADWR that because the Company will be providing water for irrigation purposes only, there are no regulatory reporting requirements that will apply to the Company.

44. We also take Administrative Notice that, based on the Township-Range-Section information provided by the Company, the proposed CC&N area is not within the Douglas Irrigation Non-Expansion Area.¹⁰

45. Because an allowance for property tax expense will be included in Wayward Winds' rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of water and wastewater companies have been

¹⁰ According to the Arizona Department of Water Resources website, the Douglas Irrigation Non-Expansion Area ("INA") was established by the 1980 Groundwater Management Act. Within the INA, only land that was legally irrigated at any time between January 1, 1975, and January 1, 1980, may continue to be irrigated.

1 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
2 some for as many as 20 years. It is reasonable, therefore, that as a preventive measure Ridgeline shall
3 annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the
4 Company is current in paying its property taxes in Arizona.

5 CONCLUSIONS OF LAW

6 1. Wayward Winds is a public service corporation within the meaning of Article XV of
7 the Arizona Constitution and A.R.S. §§40-281 and 40-282.

8 2. The Commission has jurisdiction over Wayward Winds and the subject matter of the
9 application.

10 3. Notice of the application was provided in accordance with Arizona law.

11 4. There is a public need and necessity for water service in the proposed service area as
12 set forth in Exhibit A attached hereto.

13 5. Wayward Winds is a fit and proper entity to receive a Certificate to provide water
14 service in the proposed service area as set forth in Exhibit 'A' attached hereto.

15 6. Staff's recommendations, as well as the recommendations set forth in Findings of Fact
16 Nos. 34 and 45, are reasonable and should be adopted.

17 ORDER

18 IT IS THEREFORE ORDERED that the application of Wayward Winds for a new Certificate
19 of Convenience and Necessity to provide water service to the area in Cochise County, Arizona, as
20 described in Exhibit 'A' hereto, is approved *subject to certain conditions, recommendations and*
21 *requirements as set forth below.*

22 IT IS FURTHER ORDERED that Wayward Winds' Certificate of Convenience and Necessity
23 shall be for irrigation purposes only. In the event that Wayward Winds decides that it wishes to
24 provide water for any other purposes, it must apply for and obtain Commission approval.

25 IT IS FURTHER ORDERED that if at any time in the future a Cochise County right-of-way
26 is affected by Wayward Winds' operations, Wayward Winds shall obtain the necessary franchise
27 agreement from Cochise County and shall file a copy of the franchise agreement with Docket Control
28 within 30 days of Cochise County Board of Supervisors' approval.

IT IS FURTHER ORDERED that Wayward Winds shall charge the following rates and charges:

MONTHLY MINIMUM CHARGE:

1-1/2 inch Meter \$95.00

COMMODITY CHARGE:

Irrigation Water Charge per 1,000 gallons \$5.00

SERVICE LINE AND METER INSTALLATION CHARGE:

1 1/2" Meter \$895

SERVICE CHARGES:

Establishment (R14-2-403.D.1) \$30.00

Establishment (After Hours) (R14-2-403.D.2) 50.00

Reconnection (Delinquent) (R14-2-403.D.1) 50.00

NSF Check (R14-2-409.F.1) 35.00

Meter Reread/If Correct (R14-2-408.C.2) 20.00

Meter Test/If Correct (R14-2-408.F.1) 20.00

Deferred Payment (R14-2-409.G.6) 5.00%

Deposit Interest (R14-2-403.B.3) 6 percent annually

Deposit (R14-2-403.B.7) Per Rule

IT IS FURTHER ORDERED that, in addition to collection of its regular rates, Wayward Winds shall collect from its customers a proportionate share of any privilege, sales, or use tax.

IT IS FURTHER ORDERED that Wayward Winds shall hire a professional accounting or bookkeeping firm.

IT IS FURTHER ORDERED that Wayward Winds shall maintain its books and records in accordance with the National Association of Regulatory Utility Commissioners' Uniform System of Accounts for Water Utilities.

IT IS FURTHER ORDERED that Wayward Winds shall use the depreciation rates delineated in Table 3 of the Engineering Report for its water system.



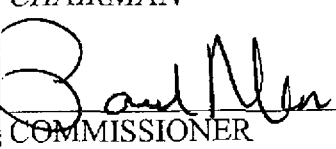
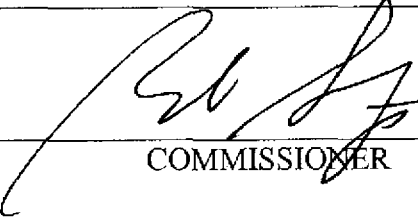

IT IS FURTHER ORDERED that Wayward Winds shall file with Docket Control, as a compliance item in this docket, within 15 days of provision of service to its first customer, documentation notifying the Commission of Wayward Winds' provision of service.

IT IS FURTHER ORDERED that Wayward Winds shall file a rate application with the Docket Control, as a compliance item in this docket, no later than five months following the fifth anniversary of the date Wayward Winds begins providing service to its first customer.

IT IS FURTHER ORDERED that Wayward Winds shall file annually as part of its annual report, an affidavit with the Utilities Division attesting that it is current on paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

 CHAIRMAN	 COMMISSIONER
 COMMISSIONER	 COMMISSIONER
	 COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 6th day of AUGUST, 2009.


 ERNEST G. JOHNSON
 EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: WAYWARD WINDS

2 DOCKET NO. W-20553A-08-0467

3

4 N. D. Bales
5 WAYWARD WINDS
6 5416 East Highway 181
7 Pearce, Arizona 85625

8 Janice Alward, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Ernest Johnson, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007

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EXHIBIT A

**Legal Description for properties to be served by
Wayward Winds Well**

120 acres as follows:

**North Half of Northwest Quarter AND Northwest
Quarter of Northeast Quarter of Section 21,
Township 15 South, Range 26 East of the Gila &
Salt River Baseline & Meridian, Cochise County,
Arizona**

COCHISE COUNTY

Map No. 53

RANGE 26 East

06	05	04	03	02	01
07	08	09	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

TOWNSHIP 15 South



(1)

Wayward Winds
Docket No. W-20553A-08-0467
Application for CC&N

DECISION NO. 71228